

I am a member of a nonprofit organization in northern New Mexico whose main goal is to unite and empower our communities against prejudice and discrimination. I would like to comment on one very key question regarding "... particular processes relevant to regulating energy transmission, storage and distribution infrastructure where more jurisdictional clarity is needed?" ... that is cited in your August 6th memo Re: Stakeholder Meeting on State, Local and Tribal Issues.

Reference is made to Federal Regulation 25 CFR 169.12 (Indians, Bureau of Indian Affairs, Department of Interior, Land and Water, Rights-of-Way Over Indian Lands). Per Docket ID: BIA-2014-0001, this rule is being updated for obtaining BIA grants of rights-of-way (ROW) on Indian land and includes Section 12 noted below.

Part 169 (Rights of Way Over Indian Land), Section 12 reads:

§ 169.12 Consideration for right-of-way grants.

Except when waived in writing by the landowners or their representatives as defined in §169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

A lawyer for several northern New Mexico pueblos interpreted this statute to mean that Native American governmental entities may charge any amount for right-of-way utility easements as long as it is more than the fair-market-value. The results of this interpretation coupled with the tribal sovereignty, has created an extremely untenable problem for businesses and other governmental entities in northern New Mexico attempting negotiate reasonable ROW costs. In some very recent instances, the cost for ROW utility easements are 300% higher than the fair market value. Currently, over 300 signatures have been obtained from non-Native and Native Americans in northern New Mexico who object to CFR 25.169.12 as it currently written. The number continues to grow as more people are becoming aware of this regulation.

I find it very difficult to agree with the DOI/BIA's assertion included in the Docket ID that states "The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

I believe Native American governmental entities are certainly entitled to monetize their resources effectively to provide better infrastructure and well-being of their members; they should not, however, do this at the cost of non-Native Americans and businesses that are at their mercy for utility right-of-ways/utility easement.

Modification to 25 CFR 169.12 needs to be made to cap the highest cost that may be acceptable for a ROW. Otherwise, the costs to be borne by customers of the electrical cooperatives and other energy companies seeking rights-of-ways from any Native American governmental entity will certainly continue to rise. These increasing costs will in turn inhibit businesses and energy companies from investigating and implementing new energy methods and technology.

Thank you for your time and consideration in these matters.



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